

JAMES E. SULLIVAN

IBLA 80-825

Decided April 1, 1981

Appeal from the decision of the Utah State Office, Bureau of Land Management, requiring execution of special stipulations as a condition precedent to the issuance of oil and gas leases.

Set aside and remanded.

1. Environmental Quality: Generally--Oil and Gas Leases: Discretion to Lease--Oil and Gas Leases: Stipulations

The Bureau of Land Management may condition the issuance of an oil and gas lease on the execution of a no surface occupancy stipulation. Where the record does not show that the Bureau has adequately considered the factors involved and that the stipulation is a reasonable means to accomplish proper departmental purposes, a decision requiring stipulations will be set aside and remanded for reconsideration.

APPEARANCES: Laura L. Payne, Esq., Poulson, Odell & Peterson, Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

James E. Sullivan has appealed the decision of the Utah State Office, Bureau of Land Management (BLM), dated June 27, 1980, requiring execution of no surface occupancy stipulations as a condition to the issuance of oil and gas leases pursuant to lease offers U-45070, U-45073, and U-45075 through U-45077. 1/ In addition, the decision

1/ The lease offers cover all of the lands in the following sections of T. 26 S., R. 8 E., Salt Lake meridian, Utah:

U-45070: secs. 1, 11, 12, 13
U-45073: secs. 14, 15, 23, 24
U-45075: secs. 25, 26, 27, 28
U-45076: secs. 5, 6, 7, 8
U-45077: secs. 17, 18, 19, 20

states that "Secs. 6 and 7, T. 26 S., R. 9 E., SLM, Utah, offer U-45076, and Secs. 18 and 19, offer U-45077, have been determined to be incompatible with other resource values. You must request if you wish to accept a 'no surface' stipulation for these sections."

In his statement of reasons, appellant argues that BLM has provided no explanation of the need for or purpose of these stipulations and that, therefore, there is no way to determine whether the stipulations are reasonable. Appellant urges that decisions of this Board require that the imposition of special stipulations be supported by valid reasons. Appellant also indicates that he has examined the Environmental Analysis Records (EAR) for the lands encompassed by his offers and refutes in detail any need for no surface occupancy stipulations on the lands based on these EAR's.

[1] The Secretary of the Interior has the discretion to refuse to issue oil and gas leases even where the lands have not been withdrawn from the operation of the mineral leasing laws. Udall v. Tallman, 380 U.S. 1, 4 (1965), rehearing denied, 380 U.S. 989 (1965). If the Secretary decides to issue a lease, he may require the execution of special stipulations to protect environmental and other land use values. Vern K. Jones, 26 IBLA 165 (1976); Bill J. Maddox, 22 IBLA 97 (1975); 43 CFR 3109.2-1. However, proposed special stipulations must be supported by valid reasons which reflect due regard for the public interest. Such stipulations will be upheld on appeal only if the record shows that BLM adequately considered the factors involved and if they reflect a reasonable means to accomplish a proper departmental purpose. H. E. Shillander, 44 IBLA 216 (1979); Neva H. Henderson, 31 IBLA 217 (1977); A. A. McGregor, 18 IBLA 74 (1974).

As appellant points out, the BLM decision provides no reasons to support the requirements of stringent no surface occupancy stipulations. The case records reveal little additional information. There is an unissued decision in one file which states that environmental analysis of the lands involved herein indicates that they have outstanding resource values which would be incompatible with surface disturbance. No additional explanation of this evaluation is provided nor is there any indication that less stringent stipulations were ever considered. See Vern K. Jones, supra.

We have no alternative but to set aside the BLM decision and remand this case for reconsideration of the need for stipulations. If BLM decides again to impose no surface occupancy stipulations, the decision and record must provide adequate justification for their imposition and show that BLM has considered less stringent stipulations. In addition, BLM should provide an explanation of the distinction between the requirements of execution of the general no surface occupancy stipulation and the requirement that the offeror request to be allowed "to accept a 'no surface' stipulation." We urge that BLM fully consider the detailed arguments made by appellant in his statement of reasons with respect to requiring the stipulations for each lease.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and remanded for reconsideration.

James L. Burski
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Bruce R. Harris
Administrative Judge

